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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 THOMAS WEINSTEIN,

11 Plaintiff,

12 v.

13 MANDARICH LAW GROUP, LLP,

14 Defendant.
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Case No. C17-1897 RSM

ORDER DENYING DEFENDANT'S
MOTION FOR PROTECTIVE ORDER

16 This matter comes before the Court on Defendant Mandarin Law Group, LLP
17 ("Mandarich")'s Motion for Protective Order. Dkt. #16. Mandarich moves for a protective
18 order preventing it from being required to produce Ryan Vos, its 30(b)(6) representative, for a
19 deposition in Washington State. *Id.* Instead, Mandarich proposes that this deposition take
20 place in California where it is located and where Mr. Vos is a resident. *Id.* According to
21 Mandarich's briefing, Mr. Vos "does not routinely travel for business purposes." *Id.* at 2.
22 Mandarich has declined to pay for Plaintiff Thomas Weinstein's counsel to travel to California,
23 and suggests that deposition could occur by video conference. *See id.* at 3–4. The Court notes
24 that Ryan Vos is also Mandarich's sole counsel of record in this case. *See* Dkt. #6.
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1 Mr. Weinstein argues it would be a financial burden to pay for his counsel to travel to
2 California for the deposition. Dkt. #17. He notes that, under Washington Rule of Professional
3 Conduct 1.8, such a cost would ultimately be his burden as the client. He submits a declaration
4 informing the Court of his financial status. He states that he makes \$19.50 per hour, has
5 minimal savings, lives paycheck to paycheck, and that his pregnant wife was injured on the job
6 and is currently on disability. Dkt. #17-2.

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8 “A party or any person from whom discovery is sought may move for a protective order
9 in the court where the action is pending – or as an alternative on matters relating to a
10 deposition, in the court for the district where the deposition will be taken.” Fed. R. Civ. P.
11 26(c)(1). “The court may, for good cause, issue an order to protect a party or person from
12 annoyance, embarrassment, oppression, or undue burden or expense...” *Id.* “If a motion for a
13 protective order is wholly or partly denied, the court may, on just terms, order that any party or
14 person provide or permit discovery.” Fed. R. Civ. P. 26(c)(3). “The decision to issue a
15 protective order rests within the sound discretion of the trial court.” *Seiter v. Yokohama Tire*
16 *Corp.*, 2009 WL 2461000, *1 (W.D. Wash. 2009).

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19 “In the absence of special circumstances, ‘a party seeking discovery must go where the
20 desired witnesses are normally located.’” *Clairmont v. Genuity, Inc.*, No. C02-1876L, 2004
21 WL 2287781, at *1 (W.D. Wash. Mar. 26, 2004) (quoting *United States v. \$160,066.98 from*
22 *Bank of America*, 202 F.R.D. 624, 627 (S.D.Cal.2001)). “A plaintiff’s claim of financial
23 hardship does not constitute special circumstances, at least when... that claim is not
24 accompanied by other exceptional circumstances.” *Id.* (citing *General Leasing Co. v.*
25 *Lawrence Photo-Graphic Supply, Inc.*, 84 F.R.D. 130, 131 (W.D. Mo. 1979)). Factors to
26 consider when determining whether another location for the deposition is appropriate include:
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1 “(1) location of counsel in the forum district; (2) number of corporate representatives to be
2 deposed; (3) likelihood of significant discovery disputes arising which would necessitate
3 resolution by the forum court; (4) whether the persons sought to be deposed often engage in
4 travel for business purposes; and (5) the equities with regard to the nature of the claim and the
5 parties’ relationship.” *Lynch v. Safeco Ins. Co. of Am.*, No. C13-654-BAT, 2014 U.S. Dist.
6 LEXIS 189107, *9-10 (W.D. Wash. Mar. 14, 2014) (citing *Stonebreaker v. Guardian Life Ins.*
7 *Co.*, 820 F. Supp. 2d 1096, 1098 (S.D. Cal. 2011). The expense to the parties and judicial
8 economy are also considerations. *Id.* at *10 (citing *Cadent Ltd. v. 3M Unitek*, 232 F.R.D. 625,
9 628-29 (C.D. Cal. 2005)). A district court has “wide discretion to establish the time and place
10 of depositions.” *Hyde & Drath v. Baker*, 24 F.3d 1162, 1166 (9th Cir. 1994).

13 This case presents the exceptional circumstance of Mandarich’s sole attorney of record
14 being named as the 30(b)(6) deponent.¹ Mr. Vos, although licensed to practice law in the State
15 of Washington, resides in California. He states in briefing that he does not often engage in
16 travel for business purposes, however he is representing a client in this district and could easily
17 be required to travel here for a hearing or the trial. Another exceptional circumstance is the
18 nature of Defendant’s business. The Court is convinced by the evidence submitted that
19 Defendant routinely avails itself of Washington State courts in its business, including in prior
20 legal action against Mr. Weinstein. *See* Dkts. #5-1 and #17-1. This leads the Court to doubt
21 the credibility of Mr. Vos’ unsubstantiated statement that he does not routinely travel for
22 business. While Mr. Weinstein’s claim of financial hardship does not alone constitute special
23 circumstances, combined with these “other exceptional circumstances” it weighs as a
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27 ¹ The Court also notes how Mr. Vos acting as Mandarich’s sole counsel *and* its 30(b)(6) witness may eventually
28 lead to problems under Washington Rule of Professional Conduct 3.7, even if it does not violate the rule.
Comment 1 to RPC 3.7 states, “[c]ombining the roles of advocate and witness can prejudice the tribunal and the
opposing party and can also involve a conflict of interest between the lawyer and client.”

1 consideration before the Court. Mr. Weinstein has presented credible evidence of an undue
2 hardship to pay for his counsel to travel to California for a deposition. Indeed, his inability to
3 pay a few thousand dollars is a fundamental background fact in this action. *See* Dkt. #1-3.
4 Given the nature of the claim and the parties' relationship, equity tips in favor of Plaintiff.

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6 Given all of the above, and having reviewed the relevant briefing, the declarations and
7 exhibits attached thereto, and the remainder of the record, the Court hereby finds and ORDERS
8 that Defendant Mandarich's Motion for Protective Order (Dkt. #16) is DENIED. The
9 deposition should occur as requested by Plaintiff. The Court declines to strike any arguments
10 in Defendant's briefing.

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12 DATED this 10th day of May 2018.

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15 RICARDO S. MARTINEZ
16 CHIEF UNITED STATES DISTRICT JUDGE
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